

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MARVA L. SCRUGGS**

Claimant

VS.

**OVERLAND PARK REGIONAL MEDICAL CENTER**

Respondent

AND

**GALEN OF KANSAS, INC./ALEXSYS**

Insurance Carrier

Docket No. 225,060

**ORDER**

Respondent and its insurance carrier request review of the preliminary hearing Order entered by Administrative Law Judge Julie A. N. Sample on January 16, 1998.

**ISSUES**

The Administrative Law Judge ordered the respondent and its insurance carrier to provide medical treatment for an alleged March 27, 1997 injury. The respondent and insurance carrier request review of the finding that claimant suffered personal injury by accident that arose out of and in the course of claimant's employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the testimony given at the preliminary hearing held September 8, 1997, the deposition testimony of Dr. Timothy J. Kloiber, together with the exhibits admitted into evidence and the briefs of the parties, the Appeals Board finds for preliminary hearing purposes that the Order of the Administrative Law Judge should be affirmed.

Claimant testified she injured herself on March 27, 1997 while pushing a patient in a bed down a carpeted hospital hallway. Claimant worked the full day of her accident and the next day. Although claimant's back was painful and achy at work Thursday and Friday, she did not know she was really hurt until Saturday. She stayed in bed and rested Saturday. She went to church Sunday and her symptoms worsened. On Monday, March

31, she sought medical treatment with Dr. Charles Yockey. His notes, however, do not reflect claimant reported a work-related injury. Likewise, the records of Dr. Kloiber, who saw claimant on April 8, 1997, did not contain any mention of the injury having occurred at work while moving a patient, even though claimant stated this in an occurrence report given to her supervisor on April 7, 1997.

The record also contains other testimony that conflicts with claimant's version of events. Sherril Foster, respondent's injury coordinator, and a co-worker, Linda Watson, both gave testimony to the effect that claimant made statements inconsistent with a work-related injury. Due to this conflicting testimony, the credibility of the witnesses becomes an important consideration. The Administrative Law Judge apparently found claimant to be a credible witness because she awarded benefits based upon claimant's testimony, finding that claimant suffered injury by accident on the date alleged which arose out of and in the course of claimant's employment. The Administrative Law Judge, in this case, had the opportunity to see the in-person testimony of the lay witnesses. She therefore had an opportunity to judge the witnesses' demeanor and credibility while they were testifying. Accordingly, the Appeals Board takes into consideration the Administrative Law Judge's findings with regard to the credibility of the claimant as a witness and will give some deference to her conclusions in that regard.

Claimant's delay in seeking medical treatment, coupled with the medical histories and her inconsistent statements to her co-workers, causes concern. However, we also have claimant's explanation of these events. Based upon the Appeals Board's review of the record as a whole, we find that the Order by the Administrative Law Judge should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the January 16, 1998 Order by Administrative Law Judge Julie A. N. Sample should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1998.

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BOARD MEMBER

c: James R. Shetlar, Overland Park, KS  
Patrick M. Salsbury, Topeka, KS  
Julie A. N. Sample, Administrative Law Judge  
Philip S. Harness, Director